BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN RE: [redacted]	)	
Petitioner.	)	
	)	No. 00-66
VS.	)	
MEMPHIS CITY SCHOOLS	)	
Respondent.	)	

FINAL ORDER

Howard W. Wilson
Administrative Law Judge
6 Public Square North
Murfreesboro, TN 37130

Attorney for Parent:
<Parent Pro Se>
[redacted]
Memphis, TN 38141

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<To protect the confidentiality of the minor student, [redacted], will be referred to as "C" on all remaining pages of this decision.>

FINAL ORDER
Case NO.: 00-66

The Petitioner's parent on behalf of her minor daughter, C, requested a Due Process Hearing. The Division of Special Education, Tennessee Department of Education appointed this Administrative Law Judge to hear the case. A Pre Conference Order was issued. The 45-day rule was requested to be waived and the court granted the request for good cause. The case was heard in Memphis, Tennessee at the Memphis City Schools Board building on February 26, 2001.

I. Findings of Fact

C is a multi-disabled, severely delayed and medically fragile child. C was 14 at the time of this hearing. She is visually impaired, speech/language impaired, physically delayed, traumatic brain injury, wheel chair bound, has scoliosis, a seizure disorder and both of her hips are dislocated. The best estimate is that C has an IQ of twenty two (22). C is profoundly delayed and profoundly mentally retarded as well as being physically disabled. Neither side disputes the fact that C is eligible for special education and related services under both federal and state laws. (Parent's Post Trial Brief)

Parent testified that student attended the Western Pennsylvania School for Blind Children in Pittsburgh. When the family moved back to Tennessee, the student enrolled in Shelby County Schools. The area where C lives was annexed by the City of Memphis in 2000 thus causing the student to be placed in Memphis City Schools. (Transcript, p. 16-17.)

Memphis City Schools originally assigned C to Kirby High School. The student had received some form of a diploma for completion of elementary school. Memphis

City Schools determined that the student should be educated in a middle school instead of a high school. (Transcript, p. 20)

Parent made a visit to the middle school but found the CDC classroom to be lacking in essential educational equipment. Mrs. Hazel Harris, special education supervisor assured the parent that the CDC classroom at Kirby Middle would be able to serve her child's needs and that necessary equipment would be brought in sometime in the future to accommodate C. (Transcript, p. 21)

Memphis City Schools indicated that the District was in an "odd position" because they had not had time to write an IEP. The District agreed to "adopt" the county's IEP as a "starting point. An IEP was never developed because of a "breakdown" between the parent and the District. (Transcript, p. 36)

C's attendance record is below average due to her medical problems. (Transcript, p. 46.)

While not qualified as an expert witness, the student's teacher assistant, Carol Lang, testified that she had observed C in and out of the classroom at Southwind Elementary School. Southwind is a Shelby County School. The witness stated that the student needed constant assistance due to her inability to perform simple tasks for herself. (Transcript, pp. 48-54)

The classroom teacher from Southwind Elementary School who taught C during the 1999-2000 school year testified that the classroom at Southwind had a large variety of educational equipment used to teach C. Further the teacher explained how the student had to be repositioned every 30-45 minutes. Most of C's educational experience at

Southwind was sensory integrated. The classroom was equipped with a bathroom along with a changing table.

Mrs. Hazel Harris, a Memphis City Schools Special Education Supervisor testified that there was no changing table in the classroom at Kirby Middle School. The changing table is down the hallway in a room that is shared with the nurse and on occasions sick students. (Transcript, p. 107-108)

Mrs. Harris testified that she believed that the school district's use of the county's 1999-2000 IEP was appropriate for C during the 2000-2001 school year. Further she stated that some OT and PT equipment was not present in the Kirby Middle School classroom but the equipment would be there "before" C started school.

Parent testified that she felt that the classroom at Kirby Middle where C was placed had too many students and should have had more teacher assistants to facilitate one on one assistance for C. Further the parent testified that the classroom contained moderate and not severe students. The other students were not blind as her daughter is. Other students did not require adaptive equipment that C must have. C also needs physical therapy, tactile stimulus, nursing assistance, changing table whereas other students in the class did not need such services and equipment. (Parent's Post Trial Brief)

An IEP team was held on 10/23/00 to "determine an educational placement for your child" as stated in the Notice of IEP Team Meeting form. Minutes were taken at this meeting but nowhere in the minutes did the school officials, some 9 in number, decide an IEP needed to be developed. The Team decided at that time to add Occupational Therapy, Physical Therapy and Speech to the related services for the student. From Exhibit # 3, OT, PT and Speech goals sheets were developed.

An IEP team meeting was held on 10/30/00 to review the program of C. During this Program Review the Team determined that a teacher assistant was needed to ride the bus with C. The Notice of IEP Team Meeting stated as the purpose, "to amend your child's present IEP". At that meeting, the Minutes state, " Dr. Thompson (Principal) had reservations about being able to appropriately serve C at Kirby Middle and did not sign the Program Review or Minutes."

No IEP was written for the 2000-2001 school year. The last IEP for C was written by Shelby County School officials on November 12, 1999 for the 1999-2000 school year.

II. Issues

1. Did the procedural violations cause C to have her substantive right to FAPE denied?

2. Was the educational placement at Kirby Middle School appropriate for C?

III. Conclusions of Law

In its most general terms, IDEA requires that every state that receives federal educational funds under IDEA make a "free appropriate public education . . .available to all children with learning disabilities" between three and 21 years of age who reside within that state. 20 U.S.C. 1412(a)(1)(A). There are certain exceptions that are not relevant here. In exchange for federal funding, the IDEA requires states to identify, locate and evaluate "all children residing in the State who are disabled . . .and who are in need of special education and related services."20USC 112(2). States must provide all such disabled children a "free appropriate public education" (FAPE), 20 USC

1401(a)(18), and school districts receiving funds under the IDEA **must establish an IEP for each child** with a disability, 20 USC 1414(a)(5). Congress defined an IEP as follows:

> [A] written statement shall be developed for each child with a disability developed in an meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of such child, and, whenever appropriate, such child. 20 USC 1401(a)(20).

The requirement of a "free appropriate public education" is satisfied by means of an IEP that is particular to the child with a disability, and by the "procedural safeguards" contained in the statute. See 20 U.S.C. 1415. Among these procedural safeguards is the right to an "impartial due process hearing" of which C's parent availed herself in this case, See 20 U.S.C. 1415(f).

A discussion of the applicable substantive legal standard of educational benefits required by the Education of the Handicapped Act, renamed in 1990 the IDEA, commences, as it must, with the seminal United States Supreme Court opinion in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176 (1982). A State is eligible for funding from the Federal government under the IDEA if, *inter alia*, the State's policies and procedures ensure the availability of a free appropriate public education to all children with disabilities residing within the State between the ages of 3 and 21, inclusive. 20 U.S.C. § 1412(a)(1). The term "free appropriate public education," or FAPE, is defined by the IDEA, 20 U.S.C. § 1401, as follows:

(8) Free appropriate public education

The term "free appropriate public education" means special education and related services that---

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) **are provided in conformity with the individualized education program [IEP]** required under section 1414(d).(Emphasis supplied.)

The U.S. District Court in Rowley, 483 F.Supp. 528 (S.D. NY 1980) held that a FAPE was "an opportunity to achieve [the child's] full potential commensurate with the opportunity provided to other children" and "requires that the potential of the handicapped child be measured and compared to his or her performance, and that the resulting differential or 'shortfall' be compared to the shortfall experienced by non-handicapped children." 483 F.Supp. 528, at 534 (1980). The U.S. Supreme Court disagreed. The Court noted that the Act also defined the term "special education" to include instruction "in the home" and the term "related services" to include services "as may be required to assist a child with a disability to benefit from special education." See 20 U.S.C. § 1402(22) and (5) The Court held, therefore, that a FAPE---

> consists of educational instruction specifically designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and **comport with the child's IEP**. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" as defined by the Act.

Rowley at 188-189 (Emphasis supplied). See also at 203-204. Furthermore, the Court held that---

> By passing the Act, Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful.

Rowley at 192.

The Court concluded that the role of the courts in reviewing the administrative proceedings in the State is simply a twofold inquiry:

> First, has the State complied with the procedures set forth in the Act? And second, **is the individualized education program developed through the Act's procedures** reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Rowley at 206-207 (Emphasis supplied).

"Special education" as the term is used in the statute means "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability. including. . .instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.. . ." "Related services" as used in the statute means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audio logy services, psychological services. . .social work services, [and] counseling services. . .) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. 20 U.S.C. 1401(22).

IDEA contains specific requirements for both the IEP itself and the IEP team. Among other things, the IEP must contain a statement of the child's present level of functioning as affected by the disability; a statement of "measurable annual goals,

including benchmarks or short-term objectives"; a statement of "special education and related services and supplementary aids and services" to be provided to assist the child in advancing toward the IEP goals and in participating in activities with other children; and a statement of any necessary "individual modifications in. . .assessments of student achievement." 20 U.S.C. 1414(d)(1)(A).

Section 614(a)(5) of the Individuals with Education Disabilities Act provides that each public agency **must hold meetings periodically, but not less than annually**, to review each child's IEP and, if appropriate, revise, its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as one child may need. (121 Cong. Rec. S20428-29 (Nov. 19,1975) remarks of Senator Stafford. [Emphasis supplied]

Federal Regulations implementing the Act provide that "[e]ach public agency shall initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. **A meeting must be held for this purpose at least once a year.** 34CFR 300.343(d) [emphasis added]

The stated purposes of the Act include the following: "to assure that all children with disabilities have available to them, within the time periods specified in section 1412(2)(B) of IDEA, a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, [and] to assure that the rights of children with disabilities and their parents or guardians are protected. 20 USC 1400 (c).

Federal regulations implementing IDEA require that each public agency ensure that a continuum of alternative placements be available to meet the needs of children with

disabilities for special education and related services. The continuum required must include the alternative placements listed in the definition of special education under 34 CFR 300.17---instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Not every possible placement along the continuum need be offered by they need to be available.

The rights guaranteed by IDEA are "procedural" in nature. "Notably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children." Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 189 (1982) ("Rowley"). "By passing the Act, Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful." Id. at 192.

A violation of the IDEA's procedural provisions is not a per se violation of the Act. Parent v. Oscola County School Bd., 59 Supp. 2d 1243, 1250 (M.D.Fla. 1999). To recover under IDEA for violation of a procedural provision, a plaintiff must show harm to the student as a result of the alleged procedural violation. Without substantive harm, the procedural violation does not cause liability to attach. Daugherty v. Hamilton County Schools, 21 F.Supp.2d 765, 772 (E.D.Tenn. 1998). Further the Sixth Circuit has stated that procedural violations casing substantive harm can cause liability to attach. Metropolitan Bd. of Public Education v. Guest, 193 F.3d 457, 1999 (6th Cir. Oct 4, 1999).

In the Sixth Circuit, it is well settled that the school system's proposed program need not maximize the child's potential, Doe v. Board of Educ., 9F.3d 455 (6th Cir. 1993) cert. den., 114 S. Ct. 2104 (1994), "but must only provide a 'basic floor of opportunity which will allow the child to progress with his education." Brown v. Wilson County, 747 F. Supp, 36, 442 (M.D. Tenn. 1990). See also Tucker, 1998 WL 63009 at 9, quoting with approval Gregory K v. Longview School District, 811 F.2d 1307, 1314 (9th Cir., 1980) ("an 'appropriate' public education does not mean the absolutely best or 'potential-maximizing' education for the individual child.") Gregory cites Rowley, 458 U.S. at 197 n. 21, which states "Whatever Congress meant by an 'appropriate' education, it is clear that it did not mean a potential-maximizing education." The proposed program need not be the best one available, so long as it is appropriate. Age v. Bullitt County Public Schools, 673 F.2d 141, 143 (6th Cir. 1982)

Procedural flaws do not automatically require a finding that a school district has denied a child a free appropriate public education. However, procedural flaws that result in the loss of educational opportunity or seriously infringe the parent's opportunity to participate in the IEP formulation process, clearly result in the denial of a free appropriate public education. W.G. v. Board of Trustees of Target Range School District, 960 F.2d 1479, 1483 (9th Cir. 1992). Further, the Sixth Circuit has held that technical defects do not result in a violation of the IDEA if there is no substantive harm. Thomas v. Cincinnati Board of Education, 918 F. 2d 618, 625 (6th Cir. 1990). Any perceived difficulty with procedural issues which do not rise to a level of actual violations for which a remedy may exist because the school system has substantially complied with the Individuals with Disabilities Education Act (IDEA) will fail. Cordrey v. Euckert, 917

F2d 1460, 17 EHLR 104 (6th Cir. 1990), cert. den. 111 S. Ct. 1393 (1991). It would be inappropriate to "exalt form over substance" holding that alleged technical deviations rendered the school system liable. Doe v. Defendant I, 898 F2d 1186, 1190-1 (6th Cir. 1990). Finally, only harmful violations described in Doe v. Alabama State Department of Education, 915 F.2d 651 (11th Cir. 1990)] would entitle a child to relief.

Procedural inadequacies that seriously infringe the parent's opportunity to participate in the IEP formulation process ma result in the denial of a free appropriate public education. W.G. v. Board of Trustees of Target Range School Dist., 960 F.2d 1479, 1484 (9th Cir 1992). But here, there are no allegations that the Plaintiff was denied an opportunity to participate in the IEP process but the review of the 1999-2000 IEP did not meet the legal standard of the Act when writing a new IEP.

Procedural violations that deprive an eligible student of an individualized education program or result in the lost of educational opportunity also will constitute a denial of a FAPE under the IDEA. Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992).

When parents challenge the appropriateness of a program or placement offered to their disabled child the school district under the IDEA, the Administrative Law Judge must undertake a twofold inquiry. Bd. of Education v. Rowley, 58 US 176, 206-07 (1982). First, the Court must ask whether the school district has complied with the procedures set forth in the IDEA. Second, the court must determine whether the IEP, developed through the IDEA's proceedings, is reasonably calculated to enable the child to receive educational benefits. There is no violation of the IDEA so long as the school district has satisfied both requirements. Rowley.

If the Court finds that the procedural violations have resulted in substantial harm, and thus constituted a denial of the students right to a FAPE, the Court is then able to "grant such relief as the court determines is appropriate." 20 USC 1415(e)(2).

20 USC § 1415(e)(2) allows a court discretion to award "such relief as the court determines is appropriate." "Equitable considerations are relevant in fashioning relief," Burlington v. Department of Ed, 471 U.S. 359 (1985), "and a court enjoys 'broad discretion' in so doing, at 369. . ."

It is generally recognized that due process hearing officers are to exercise the same broad discretion in fashioning equitable relief under 20 U.S.C. § 1415(i)(2) as is to be exercised by Federal district courts. See S-1 by and through P-1 v. Spangler, 650 F.Supp. 1427 at 1431 (M.D.N.C. 1986), vacated as moot, 832 F.2d 294 (4th Cir. 1987); Ivan P. v. Westport Bd. of Educ., 865 F.Supp. 74 at 80 (D. Conn. 1994), reported in 21 IDELR 910, affirmed 101 F.3d 686 (2d Cir. 1996). Accordingly, the courts must give "due weight" to the prior administrative proceedings and are statutorily held in their review of those proceedings to a "preponderance of the evidence" standard. Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176 at 205-206 (1982). See Delaware County Intermediate Unit #25 v. Martin and Melinda K., 831 F.Supp. 1206 at 1213-14 (E.D.Pa.1993).

In Burlington v. US Dept of Education, EHLR 556:389 (US S Ct, 1985), the U.S. Supreme Court stated that under IDEA a court (and given the exhaustion of administrative remedies doctrine implicitly a hearing officer) has the broad authority to fashion appropriate relief considering equitable factors, which will effectuate the

purposes underlying the Act, relying upon 20 USC § 1415(e)(2). The Office of Special Education Programs (OSEP) in Kohn, 17 EHLR 522 (OSEP 1990), and various courts have ruled that a hearing officer under IDEA has the authority to grant any such relief which could later be obtained by a party in federal or state court. See S-1 Spangler, EHLR 558:179 (USDC, 1986), vacated as moot EHLR 559:266 (5th Cir, 1987); and Cocares v. Portsmouth Sch Dist, 18 IDELR 461 (USDC, 1991).

Once an administrative law judge holds that the public placement violated IDEA, it is authorized to "grant such relief as the court determines is appropriate." Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate educational placement. Florence County School District Four v. Carter, 114 S.Ct. 361 at 366 (1993). The ordinary meaning of these words confers broad discretion on the court. The type of relief is not further specified, except that it must be "appropriate." Absent other reference, the only possible interpretation is that the relief is to be "appropriate" in light of the purpose of the Act.

While certain portions of the relief here granted may seem unusual, this administrative law judge believes such is warranted given the circumstances here present. See Kohn 17 EHLR 522 (OSEP, 1990); S-1 Spangler, EHLR 558:179 (USDC, 1986), vacated as moot, EHLR 559:266 (5th Cir, 198); Cocares v. Portsmouth Sch Dist, 19 IDELR 461 (USDC, 1991); Burlington v. US Dept of Ed, EHLR 556:389 (US S Ct, 1985), relying upon 20 USC 1415(e)(2).

IV. Discussion

Simply put, the school district was attempting to build an appropriate setting for C after she arrived. There was no reason this student should not have had a classroom fully equipped before she arrived. The District knew she was coming; they could have acquired her records and other student records to plan for students coming from the county. It appears that the District did not do any such planning for this more severe student coming from the county schools

The school district offered a defense the student never "enrolled" in the middle school. This is a hollow argument. The student never "enrolled" by filling out papers, but the school district obviously thought she was a student, they held an IEP team meeting for the student. In fact, the district held at least two IEP meetings.

Notwithstanding the fact the plaintiff's parent apparently could not participate in the meetings so as to guarantee that the time lines are met, the District remained responsible to have an IEP in place. Her inability to attend meetings did not excuse the District's failure to conduct an IEP meeting in a timely manner. The regulations specifically provide for the development of an IEP without parent involvement. See 34 CFR 300.345(d) and also Cordrey v. Euckert, 917 F.2d 1460, 1467 (6th Cir. 1990) The District assertion that it was waiting for the parent to attend the meeting is an erroneous one and does not justify waiting to complete an IEP. Knable by Knable v. Berley City Sch. Dist. et al. 34 IDELR 1 (6th Cir. 2001)

The parent agreed to attend an IEP meeting on October 23,2000. The District has argued that the meeting for all intent and purposes was an IEP team meeting to develop a new IEP. The Notice of IEP meeting indicated that the purpose was to "determine an

educational placement for the child." Educational placement is not determined until an IEP has been developed. At the time of the Notice to the parent, no such IEP existed. This court finds that the District willfully resolved to place C in a CDC classroom prior to the development of an IEP and in violation of the procedures prescribed by law. While the meeting was a legally constituted IEP meeting, the team failed to write a new IEP as required by law. The team reviewed the goal sheets of the last IEP and determined to accept the old IEP without modification. No new goal sheets were written except those for Occupational Therapy and Physical Therapy.

No indication exists that the team addressed the additional agenda items that comprise a formal IEP conference. There was no determination of the nature and degree of special education intervention needed for the student, present levels of educational performance, special factors to be considered for all students when writing an IEP, goal sheets for areas of deficit, a transition statement, explanation of regular class participation, number of hours in special education; extent to which the student would not participate in regular education, modifications for the student in the regular classroom, and participation in state mandated testing. The IEP meeting did not result in the production of an IEP document.

The school district never convened an IEP meeting for the entire 2000-2001 school year to write an IEP that meets the procedural requirements of the Act. Thus the Plaintiff lost an entire year of educational opportunity. Consequently, the Plaintiff did not have "access to specialized instruction and related services" that was "individually designed to provide educational benefit." Rowley, 458 U.S. at 201. Without an IEP in

place, no possible way could exist for the student to make meaningful educational progress.

However well intentioned the District feels it may have been, the fact remains that the District had an affirmative obligation to write an IEP for C. but failed to ever do so. A program was never offered to the parent for C. Therefore ultimately, C suffered an entire year loss of educational benefit.

FAPE has not been provided to C for failure by the school district to prepare an IEP. This court does not have to reach a decision on whether the middle school placement was appropriate or not. There is no document (IEP) to reference as to whether Kirby Middle School CDC classroom would have provided FAPE or not. The record unequivocally proves that the procedural violations have led to a substantive violation of IDEA by Memphis City Schools.

Because the District has completely abdicated its responsibilities to this child and her parent for an entire school year, and whereas, ordering the school district to provide FAPE at its own schools would be futile, Memphis City Schools shall contract or otherwise ensure that the student attends Shelby County Schools for the 2001-2002 school year. Shelby County Schools is the last placement where this student received a free appropriate public education.

This Court considered receiving additional testimony regarding an alternative placement for C from within and without the school district. But due to the short period of time before school starts in the fall, an IEP Team must meet immediately and space be reserved for the student in Shelby County Schools.

The Memphis City Schools is charged with the responsibility to assure that this Decision has been implemented in accordance with the rules and regulations of the Tennessee Department of Education and the Individuals with Disabilities Education Act.

In the pivotal case of Burlington v. Department of Education, the U.S. Supreme Court ruled that parents can obtain reimbursement if:

> 1) the placement proposed by a school in an IEP was not appropriate, and
> 2) the alternative placement into which the parents put their child was appropriate.

Burlington at 369-70. The Supreme Court noted that parents who question the appropriateness of a proposed IEP are forced to choose whether to:

> go along with the IEP to the detriment of their child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement. If they choose the latter course. . .it would be an empty victory to have a court tell them several years later that they were right but that these expenditures could not. . .be reimbursed by the school officials.

471 US at 370.

The parent of C did not attempt to find a private placement but continued to rely on Memphis City Schools to provide FAPE. Memphis City Schools has failed miserably at providing FAPE. Similar to Burlington, the placement of Memphis City Schools is inappropriate due to the lack of an IEP. Secondly, in lieu of reimbursement, for the parent, Memphis City Schools shall ensure a free education in the Shelby County Schools. MCS obviously thought that Shelby County's placement was appropriate since they grossly attempted to "adopt" the county's year old IEP as their own including goals and objectives.

Given that the prior relationship between the parties has not been good and C's programmatic and service needs have not be met, it is not unrealistic to consider placement outside of Memphis City Schools. Repeated failures to adequately

communicate with the parent by the Director of the Division and her supervisors "due to lack of time" does not speak highly of the Division. Memphis City Schools was given a chance to write its own IEP before the previous IEP expired. Further MCS was given a chance by the parent to create an appropriate learning environment for C but failed completely.

V. ORDER

1. **It is hereby Ordered** that Memphis City Schools shall write an IEP for C within 20 days of receipt of this Order. Teachers and administrators are to be paid if necessary to accomplish this meeting.

2. **It is furthered Ordered** that Memphis City Schools shall invite a representative from Shelby County Schools to attend the IEP meeting.

3. **It is furthered Ordered** that Plaintiff shall be registered and educated in Shelby County Schools for the 2001-2002 school year. Memphis City Schools shall use whatever means necessary to ensure the educational placement in Shelby County Schools begins the first day of school for Shelby County Schools. Necessary contracting between the two school systems shall not be a deterrent to implementing this Order.

4. **It is furthered Ordered** that Memphis City Schools shall provide appropriate transportation for the Plaintiff from her home to her assigned school in Shelby County and back.

5. **It is furthered Ordered** that all costs associated with the education of C including any incidental cost incurred by Shelby County Schools shall be paid by Memphis City Schools. including but not limited to, the need for special transportation for school

sponsored events, one on one teacher assistant, if so determined by the IEP Team, special educational devices, games or materials.

6. **It is furthered Ordered** that the parent is the prevailing party in this matter.

THIS DECISION IS BINDING UPON ALL PARTIES UNLESS APPPEALED. Any party aggrieved by the findings and decision may appeal to the David County Chancery Court of the State of Tennessee, or may seek review in the United States District court for West Tennessee. Such an appeal must be taken within sixty (60) days of the entry of the Final Order in non-reimbursement cases and within three (3) years in cases involving reimbursement of educational costs and expenses. In appropriate case, the reviewing Court may direct this Final Order be stayed.

ENTERED, this the ____ day of June, 2001.

Howard W. Wilson 014007
Administrative Law Judge
6 Pubic Square, North
Murfreesboro, Tennessee 37130

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Final Order was mailed on the ____ day of June, 2001 to parent, [redacted], [redacted], Memphis, Tennessee 38141; Attorneys for School District, Ernest G. Kelly, Michael R. Marshall, Stokes Bartholomew Evans & Petree, P.A., 81 Monroe Avenue, Memphis, Tennessee 38103; and to the Division of Special Education, State Department of Education, Nashville, TN 37243-0375.

Howard W. Wilson